IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EMANUEL BORELAND,	:	**CIVIL ACTION**
Plaintiff,	:	
v.	:	
J. BUTTERLY, et al.,	:	
Defendants.	:	**NO. 92-0458**

FINAL ADJUDICATION INCLUDING
FINDINGS OF FACT AND CONCLUSIONS OF LAW, VERDICT AND JUDGEMENT

Reed, J. **August 21, 1997**

A non-jury civil trial in which plaintiff Emanuel Boreland ("Boreland"), proceeding *pro se,* as well as defendants with their counsel participated, was conducted on July 15, 1997. Based upon the pleadings, the proposed findings of facts, conclusions of law and legal memoranda by both parties, the evidence presented at trial, and the arguments of Boreland and defense counsel at trial, I make the following findings of fact and conclusions of law:

Findings of Fact

A. Summary of Relevant Procedural History

1. Boreland has brought this action while a state prisoner incarcerated at SCI[1] Camp Hill seeking monetary damages and injunctive relief against defendants J. Butterly ("Butterly"), F. Staub ("Staub"), Sheriff John Green ("Green"), and the City of Philadelphia. Testimony of Boreland; Complaint at III (B), (C); Amended Complaint ¶¶ 1-5, B-D; Pl. Exh. P-1 (Report and Recommendation of Magistrate Judge Angell at 1-2). This Court has jurisdiction pursuant to 28 U.S.C. § 1331. At the time of the incident giving rise to this litigation on January 9, 1992, Boreland was a convicted and sentenced prisoner.

[1] SCI is the known abbreviation for State Correctional Institution.

Testimony of Boreland.

2. On July 15, 1997, the first phase of the bifurcated non-jury trial in this matter was held; this first phase was limited to the liability of Butterly and Staub in failing to provide Boreland with medical assistance in violation of the Eighth Amendment of the United States Constitution and the liability of Green and the City of Philadelphia for failing to have an adequate policy and for failing to train and supervise the deputy sheriffs with respect to the transportation of prisoners, specifically for exposing them, including plaintiff, to physical injury by not assisting prisoners with egress and ingress of the buses.

3. Boreland was competent to proceed *pro se* with his case. First, the facts giving rise to this litigation are not complex. Second, through his submissions to the Court and his conduct before and during the nonjury trial on liability, Boreland has demonstrated to be skilled and knowledgeable with respect to substantive legal matters and trial procedure. Boreland has vigorously prosecuted his case. He had pursued the proper offensive by seeking a partial summary judgment and he subsequently filed appropriate objections to the Report and Recommendation of the United States Magistrate Judge Angell. He had submitted proper motions for reconsideration when appropriate. Immediately prior to trial, Boreland properly submitted a motion for an indefinite postponement of trial and he participated in pretrial conferences on July 3, July 10, and July 11, 1997 during which he knowledgeably and of his own free will, after a suitable colloquy, again waived a jury trial as he had upon filing this action and after defendants had also waived a jury trial.[2] During trial, he submitted several exhibits in the evidentiary record, including admissions of defendants in their written responses made during discovery and admissions of defendants made in their pleadings. In addition, he made a tactical decision during trial not to have the Court order a trial witness, Larry McCoy ("McCoy"), to testify since McCoy was a most

[2] This Court denied plaintiff's request to postpone the trial. See Order of July 11, 1997 (Document No. 116) (discussing reasoning for denial). To relieve plaintiff of some of the burden of trial preparation and trial, this Court bifurcated the trial so that plaintiff could focus only on the liability phase first.

reluctant witness; instead, without objection by defendants, Boreland submitted the affidavit of McCoy into evidence and used it appropriately (see Finding of Fact # 10).[3] Post trial, in a timely fashion, Boreland properly submitted proposed findings of facts and conclusions of law accompanied by a legal memorandum that adeptly explains his position.

B. The Factual Merits

4. Green is head of the Sheriff's Office for the County and City of Philadelphia. Pl. Exh. 4 (Answers to Interrogatories of Green # 1). The Sheriff's Office is responsible for training its employees in the protection and welfare of all prisoners in their custody. Testimony of Green. Green is responsible for the creation of the administrative directives and policies governing the operation of the Sheriff's Office. Testimony of Green.

5. Directives # 7 and # 8 of the Sheriff's Office were in effect on January 9, 1992. Testimony of Green. Directive # 7 is entitled "Handling of Prisoners," which sets forth guidelines for searching a prisoner prior to custody, handcuffing or restraining a prisoner, the number of deputy sheriffs necessary for prisoner transport, and the responsibilities of the deputy sheriffs during prisoner transport. Def. Exh. D-2 at II.A.4(a)-(m). Specifically, Directive # 7 states, "The Unit Commander, or his designee, shall implement procedures to ensure the safety of the deputy/public/prisoner." Def. Exh. D-2 at II.A.2. Directive # 8 is entitled "Prisoner Transport," which sets forth guidelines for food, toilet facilities, hostage and escape situations, emergency aid, ill or physically or mentally handicapped prisoners, and mechanical problems during prisoner transport. Def. Exh. D-3. Specifically, Directive # 8 states, in relevant part:

> II.A.
> 3. The Unit Commander, or his designee, shall implement procedures to ensure:
> A. Safety of the deputy/public/prisoner.

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[3] This Court issued a writ of habeas corpus of Larry McCoy to ensure that McCoy would be available at the courthouse to testify on the date of the trial. (Document No. 112).

B. The prisoner's rights are protected.

. . .

13. Deputies shall not stop to render emergency aid during a prisoner transport. A Deputy shall utilize the radio and supply the information to the dispatcher.

. . .

16. During a transport, when a prisoner becomes ill, the deputies shall evaluate the prisoner's complaint. When necessary deputies shall seek medical assistance.

. . .

21. Deputies shall give special care and consideration to prisoners who are either mentally or physically handicapped.

A. Physically and mentally handicapped prisoners shall be restrained in an appropriate manner.

B. When special problems occur, (e.g., pregnant prisoner) deputies shall employ common sense, or when appropriate, contact their supervisor for instructions.

Def. Exh. D-3 at II.A (3),(13),(16),(21). The provisions of directive # 8 often instruct the deputies to notify the supervisor and/or notify the radio dispatcher when emergencies develop. Def. Exh.II.A (13),(14),(17),(18),(19),(20),(21). Through a cell phone and/or radio, deputy sheriffs have easy, efficient, and continual contact with their supervisors during prisoner transport. Testimony of Green.

6. Directives # 7 and # 8 do not specifically address and the Sheriff's Office does not have a specific policy requiring deputy sheriffs to assist prisoners on and off a bus. Testimony of Green. For purposes of security and to ensure the safety of the deputy sheriffs, the public, and the prisoners, it is the general policy, practice, and custom of the Sheriff's Office to afford deputy sheriffs maximum flexible discretion to respond to events and circumstances occurring when performing their functions. Testimony of Green.

7. Butterly and Staub attended and passed all state mandated requirements under the Deputy Sheriff Training Act provided at a month-long course at Dickenson College in Pennsylvania covering prisoner safety, handcuffing, and medical treatment. Testimony of Butterly; Testimony of Staub; Pl. Exh. 4 (Answers to Interrogatories of Green # 3(D)). Deputy sheriffs receive on the job training as well. Testimony of Butterly. All deputy sheriffs receive a copy of the Sheriff's Office directives.

Testimony of Green. Butterly had received copies of Directives # 7 and # 8 prior to the incident on January 9, 1992. Testimony of Butterly. At the time of the incident in January 1992, Butterly had been a deputy sheriff for approximately six years, Staub had been a deputy sheriff for approximately seven years, and Jerry Czaban ("Czaban") had been a deputy sheriff for approximately eight years.

8. As a general practice, during transport by the Philadelphia Sheriff's Office, the right hand of each prisoner is handcuffed to the right hand of one other prisoner. Testimony of Green; Testimony of Butterly. The majority of prisoners are not shackled at the ankles during prisoner transport. Testimony of Green. The practice of shackling prisoners is reserved for extraordinary circumstances, such as a funeral visit, hospital visit, noncooperative prisoner, or prisoner who poses an escape or security risk. Testimony of Butterly; Testimony of Staub; Testimony of Czaban. The prisoners often carry their respective legal files during transport. Testimony of Boreland; Testimony of Butterly.

9. The Sheriff's Office has not received any complaints regarding prisoners who incur injuries as a result of unassisted egress or ingress of the buses during transport. Testimony of Green. Staub testified that, while he has seen prisoners stumble over their own feet, he has never seen a prisoner fall on the bus during transport. Testimony of Staub. Butterly testified that on the few occasions he has observed a prisoner fall, it was because the prisoner tripped over his own feet or because the prisoner intentionally fell in an effort to avoid going to court. Testimony of Butterly. I credit this testimony.

10. The affidavit of McCoy supports the finding that prisoners are not assisted on and off a bus during transport. McCoy states, without reference to a time frame, frequency or number of occasions, that he has observed prisoners stumbling and struggling while getting into the transport vehicle, but that, on one he occasion, he observed a prisoner fall. Pl. Exh. P-2 at ¶ 8 (Aff. of McCoy).

11. Boreland has failed to prove by a preponderance of the evidence the

existence of an unreasonably dangerous practice in the transport of prisoners through a pattern of falling by prisoners during transport.

12. On January 9, 1992, Boreland was transported from SCI Camp Hill to City Hall in Philadelphia for a court appearance in a bus administered by deputy sheriffs Butterly, Staub, Czaban, and Robert Hayes ("Hayes"). Stipulation of Defendants at Trial; Testimony of Butterly; Testimony of Staub; Answer ¶ 5. The City of Philadelphia owned the bus used to transport Boreland on this date. Pl. Exh. 4 (Answers to Interrogatories of Green # 11).

13. Boreland was handcuffed to another prisoner and was carrying his legal file during transport from SCI Graterford to City Hall. Testimony of Boreland. No prisoners were shackled at the ankles on the bus run that transported Boreland to City Hall that day. Testimony of Staub; Testimony of Czaban.[4]

14. The bus on which Boreland was transported on January 9, 1992 contained a hand rail along the left side of the steps of the entranceway and a sturdy, vertical pole at the top of the steps. Testimony of Butterly.

15. While it is not likely that the events of January 9, 1992 took place exactly as Boreland described during the trial,[5] I find that he was injured while falling on the bus and that the injury consisted of a pulled wrist, a bruised hip, dizziness, and broken prescription eye glasses. Testimony of Boreland. Boreland was not bleeding, was not cut, and was not knocked unconscious. After the fall, Boreland could speak and communicate

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[4] At trial, Boreland testified that his legs were shackled together by a chain extending between twelve and fifteen inches in length. Testimony of Boreland. The credibility of Boreland's testimony is weakened by his own evidentiary submission, namely his "Official Inmate Grievance." Pl. Exh. 6. This grievance was submitted to the grievance coordinator at SCI Graterford by Boreland the day following the incident. In his grievance report, Boreland mentions only that he was handcuffed to another inmate. He does not mention that his legs were shackled. Pl. Exh. 6. Similarly, in his original complaint in this case, Boreland alleges that he fell because he was handcuffed to another prisoner. Complaint ¶ 2 (Document No. 3). Again, there is no mention that his legs were shackled.

[5] Boreland testified that he fell one two occasions during his transport from SCI Graterford to City Hall: first, on the steps while boarding the bus; and second, while climbing into his seat inside the bus. Testimony of Boreland. However, his original complaint and "Official Inmate Grievance" describes only one fall. Complaint ¶ 2; Pl. Exh. 6.

properly, and he could walk, albeit in pain and with a limp. Testimony of Boreland. The fall occurred when the bus was about to depart from SCI Graterford at approximately 8:45 a.m. Testimony of Boreland.

16. Boreland testified that he called out in pain and asked for help at the time of the fall and later asked both Butterly and Staub for medical assistance when he exited the bus upon arrival at City Hall at approximately 10:00 a.m. Testimony of Boreland. Both Butterly and Staub have no recollection of seeing Boreland fall on the bus or of Boreland asking them for medical assistance or of noticing that his eye glasses were broken. Testimony of Butterly; Testimony of Staub. I credit the testimony of Butterly and Staub. The log of the sally port at Graterford did not show any complaints on that day. Pl. Exh. 4 (Answers to Interrogatories of Green # 11); Testimony of Butterly.

17. Boreland remained in a holding cell in City Hall from approximately 10:00 a.m. until approximately 4:00 p.m., during which time he did not request or receive medical attention. Testimony of Boreland.

18. I find that Boreland did not bring any serious injury to the attention of Butterly, Staub or any other correctional officer during his transport on January 9, 1992 and that thus neither Butterly nor Staub deliberately ignored a request to provide medical assistance to Boreland that day.

19. Upon his return to SCI Graterford at approximately 5:15 p.m., Boreland was seen by Dr. Sewell. In the medical report, Dr. Sewell wrote that plaintiff suffered from a mild erythema (redness of the skin) of the wrist, a pulled wrist due to the handcuff and a bruised hip, but there was "no swelling" and "no serious injury." Def. Exh. D-1 at 93. Tylenol (an over-the-counter analgesic) was given to Boreland to be taken as needed. Def. Exh. D-1 at 93.

Conclusions of Law[6]

1. Having found that Boreland was a convicted prisoner at the time of the alleged incident and at the time he commenced this lawsuit, I conclude that the Eighth Amendment's prohibition against cruel and unusual punishment applies. See Ingraham v. Wright, 430 U.S. 651, 671-72 n.40 (1977); Romeo v. Youngberg, 644 F.2d 147, 156 (3d Cir. 1980).

2. The two essential elements of a § 1983 action are generally: (1) the conduct complained of was committed by a person acting under color of state law; and (2) this conduct deprived a person of the rights, privileges or immunities secured by the Constitution or laws of the United States. See West v. Atkins, 487 U.S. 42, 48 (1988); Kost v. Kozakiewicz, 1 F.3d 176, 184 (3d Cir. 1993). It is beyond cavil that the conduct complained of in this case was undertaken under color of state law. Therefore, I conclude that the first element has been satisfied.

3. Mere negligence in causing an injury to a prisoner is not sufficient to establish a § 1983 cause of action. See Davidson v. Canon, 474 U.S. 344, 347 (1986); Daniels v. Williams, 474 U.S. 327, 333-34 (1986). A valid § 1983 claim is established when prison officials have exhibited a deliberate or reckless indifference or callous disregard to the prisoner's safety. See Simmons v. City of Philadelphia, 947 F.2d 1042, 1068, 1070 (3d Cir. 1991); Colburn v. Upper Darby Township, 838 F.2d 663, 668 (3d Cir. 1988) (citing Davidson v. O'Lone, 752 F.2d 817 (3d Cir. 1984) (*en banc*), aff'd sub nom. Davidson v. Canon, 474 U.S. 344 (1986)). Eighth Amendment liability requires more than ordinary lack of due care for the prisoner's interests or safety. Whitley v. Albers, 475 U.S. 312, 319 (1986); Daniels v. Williams, 474 U.S. 327, 328 (1986). The Eighth Amendment requires

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[6] To the extent that these conclusions of law include findings of fact or mixed findings of fact and conclusions of law, those findings and conclusions are hereby adopted by this Court.

prison officials to "'take reasonable measures to guarantee the safety of the inmates.'" Farmer v. Brennan, 511 U.S. 825, 832 (1994) (quoting Hudson v. Palmer, 468 U.S. 517, 526-27 (1984)). A prison official cannot be liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety. Id. at 837.

4. This Court must ascertain whether the conduct of the defendants as found in the findings of fact deprived Boreland of his constitutionally protected rights and whether the defendants acted with deliberate or reckless indifference to Boreland's safety.

5. Boreland bears the burden of proving, by a preponderance of the evidence, that the alleged knowledgeable denial of medical assistance, unsafe and inadequate policies of transporting prisoners, and the failure to train and supervise deputy sheriffs on the safe transport of prisoners actually occurred as alleged and that his constitutional rights have been denied him.[7]

A. Inadequate Policies

6. Having found that the Sheriff's Office had no knowledge of any prior serious injuries incurred by a prisoner as a result of unassisted ingress and egress during transport and having further found that the deputy sheriffs, on only a few occasions, observed a prisoner stumbling or falling when boarding or leaving a sheriff's bus, and having further found and concluded that there is no evidence of a pattern of serious harm incurred by prisoners during transport, I conclude that Boreland has failed to establish that the transport of prisoners is an unsafe or dangerous activity in general, or that the defendants were on notice, were aware or should have been aware that the transport of prisoners was an unsafe or dangerous activity, or that there occurred or were likely to occur serious harms as

[7] In his memorandum, Boreland cites, *inter alia*, to the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e), and two cases, Colburn v. Upper Darby Township, 946 F.2d 1017 (3d Cir. 1991) and Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3d Cir. 1976). I have carefully reviewed the statute and cases and conclude that they do not affect the decision I make today.

a result of unassisted egress and ingress of prisoners on the bus during transport.

7. Even if Boreland established that serious harms were incurred during transport, I conclude that Boreland has failed to establish that the officials acted with deliberate or reckless indifference or callous disregard for the safety of prisoners during transport. Having found that the written and actual policies, customs and general practices of the Sheriff's Office and the deputy sheriffs are: (i) to afford maximum discretion to deputy sheriffs in handling situations posing security and safety risks to the sheriff deputies, the public, and the prisoners; (ii) to only handcuff and not shackle the majority of prisoners during transport except in extraordinary circumstances; (iii) to use buses containing hand rails along the steps of the entranceway; (iv) to issue directives instructing deputy sheriffs how to transport and handle prisoners particularly injury-saving and security risk instructions, and (v) to foster easy and continual contact via radio with supervisors during transport if problems or emergencies should develop, I conclude that the policies, customs, and practices of the Sheriff's Office and the deputy sheriffs were reasonably adequate to promote the safety of the prisoners and do not demonstrate a deliberate or reckless indifference or callous disregard to the safety of the prisoners. In sum, Boreland has not met his burden of proving that the method of transport including the practice of not assisting prisoners on and off the bus constitutes a constitutional deprivation by the City of Philadelphia or Green.

B. Inadequate Training and Supervision

8. Inadequate training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the prison officials come into contact. See City of Canton v. Harris, 489 U.S. 378, 388 (1989). In addition to proving deliberate indifference, the plaintiff must show that the inadequate training actually caused the constitutional deprivation in question. See id. at 391. To establish deliberate indifference in failure to train, plaintiff must show that policymakers

knew of magnitude of problem and either deliberately chose not to provide officers with training or acquiesced in a long-standing practice or custom of not providing training. Simmons v. City of Philadelphia, 947 F.2d 1042, 1064 (3d Cir. 1991). The standard for a failure to train is the same as for a failure to supervise. See Groman v. Township of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995).

9. Having found that the Sheriff's Office had no knowledge of any prior serious injuries incurred by a prisoner as a result of unassisted ingress and egress during transport, I conclude that Boreland failed to show that Sheriff Green and the City of Philadelphia knew of any significant health or safety problem regarding transport of prisoners. Having found that, under the Deputy Sheriff Training Act, deputy sheriffs receive a month-long training course and on the job training in prisoner safety, handcuffing, and medical treatment, and having further found that all deputy sheriffs receive directives from the Sheriff's Office on how to safely handle and transport prisoners, and having further found that deputy sheriffs have easy, efficient, and continual means to contact their supervisors if an emergency develops during transport, I conclude Boreland has failed to show that the training program was inadequate and that Sheriff Green and the City of Philadelphia were deliberately indifferent to the training and supervision of the deputy sheriffs with respect to the transportation of prisoners on buses.

10. Because Boreland has not demonstrated the inadequacy of the training program or that the policymakers were deliberately indifferent to the training and supervision of the deputy sheriffs, he cannot and did not show how such alleged inadequacy and indifference caused his injury.

C. Medical Assistance

11. The deliberate indifference to a prisoner's serious medical needs constitutes cruel and unusual punishment under the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A serious medical need means (1) failure to treat could lead to

substantial and unnecessary suffering, injury or death and (2) physician has diagnosed a condition as requiring treatment or, one that is so obvious that a lay person would easily recognize, the need for a physician's attention. Colburn v. Upper Darby Township, 946 F.2d 1017, 1023 (3d Cir. 1991).

12. I conclude that Boreland has failed to demonstrate that his injuries on January 9, 1992 constituted a serious medical need. Having found that Boreland's injury consisted of a bruise to his forehead (the visibility and the size of which has not been shown), a bruise to his hip (which was presumably hidden by his clothes and the only possible visible sign of the injury was that plaintiff limped in an undisclosed manner when he walked), and broken eye glasses, and having further found that Boreland was able to walk and to speak and that there was no evidence of bleeding, cuts, or unconsciousness, I conclude that Boreland did not suffer from a serious medical injury or that, at any time on January 9, 1992, the deputy sheriffs would have or could have recognized his condition as serious and requiring medical attention. This conclusion is further supported by the finding that the medical report of Dr. Sewell stated that there was no serious injury on January 9, 1992.

13. In addition, having found that Boreland and Staub were neither informed of, and had no recollection of, Boreland's fall, broken eye glasses, or request for medical treatment, I conclude that Boreland has not proven that Butterly and Staub were deliberately indifferent to his medical needs.

Verdict

Having concluded that Boreland did not suffer a serious medical injury and was not deliberately denied medical care on January 9, 1992 as alleged, and having concluded that the written and actual policies, customs and general practices of the Sheriff's Office were reasonably adequate and were not deliberately indifferent to the health and safety of prisoners during transport, and having concluded that the training and supervision

of the deputy sheriffs were adequate and were not performed with deliberate indifference to the safety of prisoners during transport, I ultimately conclude that Boreland's § 1983 claim against Butterly and Staub for failure to provide medical assistance fails, and that Boreland's § 1983 claims against Green and the City of Philadelphia for failing to train and supervise the deputy sheriffs and for allowing prisoners to egress and ingress a bus without assistance fail. Accordingly, my verdict is in favor of all defendants.

An appropriate Judgement follows.

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EMANUEL BORELAND,	:	**CIVIL ACTION**
Plaintiff,	:	
v.	:	
J. BUTTERLY, et al.,	:	
Defendants.	:	**NO. 92-0458**

J U D G E M E N T

AND NOW, on this 21st day of August, 1997, after the first phase of a bifurcated non-jury civil trial on liability and based upon the foregoing findings of fact, conclusions of law, and verdict for defendants **JUDGEMENT IS ENTERED** on the verdict in favor of defendants J. Butterly, F. Staub, Sheriff John Green, and the City of Philadelphia and against plaintiff Emanuel Boreland.

LOWELL A. REED, JR., J.